

Message Text

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ACTION EB-07

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E.O. 11652: GDS

TAGS: ETRD, CA

SUBJECT: ANTITRUST - NAMING OF UNINDICTED CO-CONSPIRATORS IN
POTASH CASE

REF: STATE 156118

1. SUMMARY: PRESS IS REPORTING NAMING OF CANADIANS
AMONG UNINDICTED CO-CONSPIRATORS IN POTASH PRICE-
FIXING CASE. MEMBER OF PARLIAMENT, WHOSE NAME IS
INCLUDED IN LIST, HAS PROTESTED TO EMBASSY. MANY
PROMINENT CANADIANS LISTED. ISSUE MAY BECOME ANOTHER
CAUSE CELEBRE IN U.S./CANADIAN BILATERAL RELATIONS.
ACTION REQUESTED IN PARA 7 BELOW. END SUMMARY.

2. GAZETTE AUGUST 27 CARRIED CHICAGO-DATELINED AP
STORY UNDER HEADLINE "FIVE CANADIANS NAMED FOR POTASH
PRICE FIXING." STORY IDENTIFIED CANADIANS AS
ROSS THATCHER, DECEASED FORMER PREMIER OF SASKATCHEWAN,
ALEXANDER CAMERON, DESCRIBED AS FORMER CANADIAN
GOVERNMENT OFFICIAL, KIM THORSON, FORMER MINERAL
RESOURCES MINISTER OF SASKATCHEWAN, AND JAMES CAWLEY
AND JOHN WOTHERSPOON, BOTH FORMER DEPUTY MINISTERS
OF MINERAL RESOURCES FOR SASKATCHEWAN AND FORMER
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CHAIRMEN OF THE SASKATCHEWAN POTASH CONSERVATION

BOARD. STORY STATES THAT CANADIANS WERE AMONG 157 PERSONS AND CORPORATIONS LISTED IN U.S. FEDERAL GOVERNMENT PAPERS FILED IN DISTRICT COURT AND THAT, ALTHOUGH NOT INDICTED, "GOVERNMENT SAID THEY HAD PARTICIPATED IN THE ALLEGED PRICE-FIXING SCHEME."

3. MID-MORNING AUGUST 27 JAMES BALFOUR, PROGRESSIVE-CONSERVATIVE MEMBER OF PARLIAMENT FROM REGINA, SASKATCHEWAN, CALLED ON ACTING DCM TO EXPRESS HIS GREAT CONCERN AND EVEN OUTRAGE THAT HIS NAME ALSO APPEARS ON LIST OF UNINDICTED CO-CONSPIRATORS, ALTHOUGH PRESS HAS NOT YET PICKED IT UP. (NOTE: BALFOUR IS WELL KNOWN TO EMBASSY. HE STANDS WELL IN PARTY CIRCLES AND IS EXPECTED TO ACCOMPANY PC LEADER JOE CLARK ON A FORTHCOMING EUROPEAN TRIP. HE HAS BEEN PRO-AMERICAN.) BALFOUR SAID THAT HE IS A LAWYER AND BEFORE BEING ELECTED TO PARLIAMENT, HE HAD DONE LEGAL WORK FOR SOME OF THE POTASH COMPANIES; HE ASSUMES THIS CONNECTION IS THE REASON FOR HIS BEING ON THE LIST. BALFOUR SAID THAT ALTHOUGH THE GAZETTE IDENTIFIES FIVE CANADIANS THERE ARE CLOSE TO 20 ON THE LIST. IN ADDITION TO THOSE MENTIONED ABOVE, HE IDENTIFIED ROGER HATCH, PRESIDENT AND CEO OF CANPOTEX; TED BOWERMAN, A MEMBER OF THE SASKATCHEWAN CABINET; DAVID STEWART, LEADER OF OPPOSITION IN SASKATCHEWAN PARLIAMENT, W. Z. ESTEY, CHIEF JUSTICE OF ONTARIO SUPERIOR COURT'S TRIAL DIVISION; AL POWIS, PRESIDENT OF CANADIAN MINING INDUSTRY ASSOCIATION, AS WELL AS A NUMBER OF OTHER OFFICIALS OF SASKATCHEWAN GOVERNMENT AND POTASH COMPANIES. BALFOUR SAID JUDGE ESTEY HAD PHONED HIM THIS MORNING TO DISCUSS SITUATION AND GREAT EMBARRASSMENT THIS U.S. ACTION WILL CAUSE TO HIM AS WELL AS OTHERS CONCERNED.

4. BALFOUR SAID HIS PRINCIPAL REASON FOR CALLING AT THE EMBASSY WAS TO ASK THAT HIS NAME BE REMOVED FROM THE LIST. THE LISTING WAS ACUTELY EMBARRASSING AND COULD NOT HELP BUT DAMAGE HIS POLITICAL POSITION. HE THOUGHT THAT TO ALLEGE CONSPIRACY INVOLVING 157 PEOPLE WAS ABSURD ON THE FACE OF IT. WHILE HE COULD CONFIDENTIAL

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CONCEIVE THAT JUSTICE DEPARTMENT LAWYERS MIGHT SEE TACTICAL ADVANTAGE IN LISTING ALLEGED CO-CONSPIRATORS, HE CONSIDERED THIS RECKLESS USE OF NAMES, ESPECIALLY OF PEOPLE IN ANOTHER COUNTRY WHO HAD DONE NOTHING MORE THAN CARRY OUT NORMAL BUSINESS ACTIVITIES IN ACCORDANCE WITH LAWS OF THEIR OWN COUNTRY. IN SUM, BALFOUR ASKED FOR INFORMATION ABOUT MOTIVATION FOR JUSTICE DEPARTMENT'S

ACTION AND THAT REMEDIAL STEPS BE TAKEN.

5. ADCM TOLD BALFOUR THAT HE UNDERSTOOD HIS CONCERN, WAS NOT FULLY INFORMED ON CASE AND THEREFORE HAD NO BASIS FOR COMMENT, BUT WOULD INFORM WASHINGTON OF BALFOUR'S APPROACH AND SEEK GUIDANCE.

6. EMBASSY COMMENT: JUSTICE DEPARTMENT'S ACTION COMES AS SURPRISE TO EMBASSY IN LIGHT ASSURANCES IN PARA 5 REFTEL THAT NO CANADIANS WOULD BE NAMED AS CO-CONSPIRATORS. DEPARTMENT IS WELL AWARE OF CANADIAN SENSITIVITIES ABOUT EXTRA-TERRITORIAL INTERFERENCE IN CANADIAN AFFAIRS. NAMING OF CANADIANS STILL PROMINENT IN POLITICAL AND BUSINESS LIFE, NOT TO MENTION A SENIOR JUDGE, IS BOUND TO EXACERBATE THE PROBLEM. WE WOULD ANTICIPATE SUBSTANTIAL MEDIA INTEREST AS FACTS BECOME KNOWN AND POSSIBLE ADDITIONAL APPROACHES FROM INDIVIDUALS AFFECTED. THERE IS GOOD CHANCE ISSUE WILL BE BLOWN UP INTO ANOTHER CAUSE CELEBRE IN U.S./CANADIAN BILATERAL RELATIONS.

7. ACTION REQUESTED: REQUEST DEPARTMENT (A) EXPLORE ASAP WITH JUSTICE POSSIBILITY OF AMENDING LIST OF UNINDICTED CO-CONSPIRATORS TO ELIMINATE CANADIANS. (EMBASSY NOTES THAT SECTION I OF VOLUNTARY BILL OF PARTICULARS STATES "THIS LISTING IS SUBJECT TO AMENDMENT BY THE GOVERNMENT IN THE COURSE OF ITS ONGOING INVESTIGATION AND TRIAL PREPARATION) AND (B) PROVIDE APPROPRIATE BACKGROUND AND GUIDANCE WITH WHICH TO RESPOND TO INQUIRIES.
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